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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/725,983	11/29/2000	Christopher W. Fraser	777.400US1	1299
27488	7590	02/26/2004	EXAMINER	
MERCHANT & GOULD P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			NAHAR, QAMRUN	
			ART UNIT	PAPER NUMBER
			2124	

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/725,983

Applicant(s)

FRASER ET AL.

Examiner

Qamrun Nahar

Art Unit

2124

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to the amendment filed on 12/2/03.
2. The rejection under 35 U.S.C. 102(b) as being anticipated by "Static Correlated Branch Prediction", Cliff Young and Michael D. Smith (hereinafter Young) to claims 1-4, 6-7, 9-13, 15, 17-23, 25-34, 38-41, 43-44, 46-50, 52 and 54-58 is moot in view of the new ground(s) of rejection.
3. The rejection under 35 U.S.C. 103(a) as being unpatentable over "Static Correlated Branch Prediction", Cliff Young and Michael D. Smith (hereinafter Young) in view of Levine (U.S. 6,349,406) to claims 5, 8, 14, 16, 24, 42, 45, 51 and 53 is moot in view of the new ground(s) of rejection.
4. Claims 55-56 have been amended.
5. Claims 1-58 are pending.
6. Claim 19 is objected to because of minor informalities.
7. Claims 31-34 and 55-58 are rejected under 35 U.S.C. 112, second paragraph.
8. Claims 35-37 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
9. Claims 1-4, 6-7, 9-13, 15, 17-23, 25-34, 38-41, 43-44, 46-50, 52 and 54-58 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnston (U.S. 6,189,142).
10. Claims 35-37 are rejected under 35 U.S.C. 102(e) as being anticipated by Levine (U.S. 6,349,406).
11. Claims 5, 8, 14, 16, 24, 42, 45, 51 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston (U.S. 6,189,142) in view of Levine (U.S. 6,349,406).

Response to Amendment

Claim Objections

12. Claim 19 is objected to because of the following informalities: "object second code" on line 5 of the claim should be "second object code". Appropriate correction is required.

Claim Rejections - 35 USC § 112

13. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

14. Claims 31-34 and 55-58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 31 recites the limitation "the history operator" in lines 14-15. There is insufficient antecedent basis for this limitation in the claim.

Claims 32-34 are rejected for dependency upon rejected base claim.

Claim 55 recites the limitation "the storage" in lines 7-8. There is insufficient antecedent basis for this limitation in the claim.

Claims 56-58 are rejected for dependency upon rejected base claim.

Claim Rejections - 35 USC § 101

15. 35 U.S.C. 101 reads as follows:

Art Unit: 2124

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

16. Claims 35-37 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per claim 35, merely claimed as a “computer readable medium” that is mere arrangements or compilations of facts, information, or data *per se* and which is merely stored so as to be called “computer-readable” or even outputted by a computer without creating any functional interrelationship, either as part of the stored data or as part of the computing processes performed by the computer (“acts”), then such descriptive material alone does not impart functionality either to the data as so structured, or to the computer. Thus, such “descriptive material”, non-functional descriptive material, that cannot exhibit any functional interrelationship with the way in which computing processes are performed does not constitute a statutory process, machine, manufacture or composition of matter. And the purely non-functional descriptive material cannot alone provide the practical application for the manufacture. **Warmerdam**, 33 F.3d at 1361, 31 USPQ2d at 1760. **In re Sarkar**, 588 F.2d 1330, 1333, 200 USPQ 132, 137 (CCPA 1978). See MPEP § 2106(IV)(B)(1)(b).

As per claims 36-37, these claims are rejected for dependency on the above rejected non-statutory claim 35.

Claim Rejections - 35 USC § 102

17. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 2124

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

18. Claims 1-4, 6-7, 9-13, 15, 17-23, 25-34, 38-41, 43-44, 46-50, 52 and 54-58 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnston (U.S. 6,189,142).

Per Claim 1:

The Johnston patent discloses:

- **a computerized method for translating source code into object code, comprising:**
recognizing a history operator and a history operand in the source code; generating first object code that, when executed, saves a data history associated with an instance of the history operand (column 9, lines 43-51 and column 10, lines 1-14; “code hooks”, when executed, saves a data history associated with an instance of the history operand; where the history operand is identified by the locations where the code hooks are inserted)
- **and generating second object code that, when executed, performs the history operator on the data history** (column 8, lines 54-67 to column 9, lines 1-17).

Per Claim 2:

The Johnston patent discloses:

Art Unit: 2124

- wherein the first object code further saves values assigned to a variable in the data history when the object code is executed (column 9, lines 43-51 and column 10, lines 1-14).

Per Claim 3:

The Johnston patent discloses:

- wherein the history operand further comprises an expression of variables and wherein the first object code further saves a result of the expression in the data history (column 10, lines 1-14).

Per Claim 4:

The Johnston patent discloses:

- wherein generating first object code further comprises allocating storage for the data history (column 8, lines 34-53).

Per Claim 6:

The Johnston patent discloses:

- wherein performing the history operator on the data history further comprises: querying the data history based on contents of the data history (column 8, lines 34-53).

Art Unit: 2124

Per Claim 7:

The Johnston patent discloses:

- wherein the history operand comprises a function and the data history comprises values returned by the function (column 8, lines 34-53).

Per Claim 9:

The Johnston patent discloses:

- wherein the history operand comprises a label associated with a source code statement, and wherein performing the history operator on the data history further comprises: counting a number of times the source code statement associated with the label was executed (column 8, lines 34-53).

Per Claim 10:

The Johnston patent discloses:

- wherein the label is programmer-defined (column 8, lines 34-53).

Per Claim 11:

The Johnston patent discloses:

Art Unit: 2124

- wherein the label comprises a programming language control construct (column 8, lines 34-53).

Per Claim 12:

The Johnston patent discloses:

- wherein performing the history operator on the data history is a function selected from a group consisting of: summing the data history, averaging the data history, determining a maximum of the data history, selecting an element of the data history, determining a minimum of the data history, determining a number of values in the data history, determining a first entry in the data history, determining a last entry in the data history, determining a subsequence of the data history, performing a reduction operation, and performing a statistical function (column 8, lines 54-67 to column 9, lines 1-18).

Per Claim 13:

The Johnston patent discloses:

- the history operand comprises a programming language keyword representing a loop; and the history operator comprises an iteration count of the loop (column 8, lines 54-67 to column 9, lines 1-18).

Per Claim 15:

Art Unit: 2124

The Johnston patent discloses:

- wherein saving the data history further comprises: saving the data history in a linked list (column 8, lines 34-53).

Per Claim 17:

The Johnston patent discloses:

- wherein performing the history operator on the data history further comprises: resetting the data his

Per Claim 18:

The Johnston patent discloses:

- wherein saving the data history and performing the history operator further comprise updating an accumulator (column 8, lines 34-53).

Per Claims 19-21, 23 & 25:

These are computer-readable medium versions of the claimed method discussed above (claims 1-3, 7 & 9, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by Johnston.

Per Claim 22:

The Johnston patent discloses:

- wherein the history operand comprises a heap-allocated object (column 10, lines 15-44).

Per Claims 26-27:

These are computer-readable medium versions of the claimed method discussed above (claims 1 and 4), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by Johnston.

Per Claims 28-30:

These are computer-readable medium versions of the claimed method discussed above (claims 6, 9 and 12, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by Johnston.

Per Claim 31 (as best understood):

This is a computer system version of the claimed method discussed above (claims 1 and 4), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also anticipated by Johnston.

Per Claims 32-34 (as best understood):

These are computer system versions of the claimed method discussed above (claims 2, 12 and 9, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by Johnston.

Per Claims 38-41, 43-44, 46-50, 52 & 54:

These are another versions of the claimed method discussed above (claims 1-4, 6-7, 9-13, 15 & 17, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by Johnston.

Per Claims 55-56 (Amended, as best understood):

These are computer-readable medium versions of the claimed method discussed above, claim 1, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by Johnston.

Per Claims 57-58 (as best understood):

These are computer-readable medium versions of the claimed method discussed above (claims 6 & 9, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by Johnston.

Art Unit: 2124

19. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

20. Claims 35-37 are rejected under 35 U.S.C. 102(e) as being anticipated by Levine (U.S. 6,349,406).

Per Claim 35:

The Levine patent discloses:

- **a computer-readable medium having stored thereon a data structure, comprising: a first data field containing data representing a value associated with an instance of a history operand; and a second data field containing data representing a location within a program where the value was assigned** (column 13, lines 66-67 to column 14, lines 1-13 and Fig. 10A; each function entry/exit point is interpreted as an instance of a history operand).

Per Claim 36:

The Levine patent discloses:

- **a third data field containing a timestamp representing a time when the value was assigned** (column 13, lines 66-67 to column 14, lines 1-13 and Fig. 10A).

Per Claim 37:

The Levine patent discloses:

- wherein the data structure further comprises a plurality of entries for each of the first and second data fields and wherein the plurality of entries represent a history of the values associated with the history operand as the program executes (column 13, lines 66-67 to column 14, lines 1-13 and Fig. 10A).

Claim Rejections - 35 USC § 103

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claims 5, 8, 14, 16, 24, 42, 45, 51 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston (U.S. 6,189,142) in view of Levine (U.S. 6,349,406).

Per Claim 5:

The rejection of claim 2 is incorporated, and further, Johnston does not explicitly teach that the data history further comprises program locations where the assignments occurred and timestamps indicating when the assignment was made. Levine teaches that the data history

further comprises program locations where the assignments occurred and timestamps indicating when the assignment was made (column 13, lines 66-67 to column 14, lines 1-13).

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the method disclosed by Johnston to include that the data history further comprises program locations where the assignments occurred and timestamps indicating when the assignment was made using the teaching of Levine. The modification would be obvious because one of ordinary skill in the art would be motivated to determine the amount of time elapsed between each event.

Per Claim 8:

The rejection of claim 7 is incorporated, and further, Johnston does not explicitly teach that the data history further comprises program locations where the values were returned and timestamps indicating when the values were returned. Levine teaches that the data history further comprises program locations where the values were returned and timestamps indicating when the values were returned (column 13, lines 66-67 to column 14, lines 1-13).

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the method disclosed by Johnston to include that the data history further comprises program locations where the values were returned and timestamps indicating when the values were returned using the teaching of Levine. The modification would be obvious because one of ordinary skill in the art would be motivated to determine the amount of time elapsed between each event.

Art Unit: 2124

Per Claim 14:

The rejection of claim 1 is incorporated, and further, Johnston does not explicitly teach that saving the data history further comprises: saving the data history in an array, wherein each element of the array comprises a value associated with the history operand at a particular time. Levine teaches saving the data history further comprises: saving the data history in an array, wherein each element of the array comprises a value associated with the history operand at a particular time (column 13, lines 66-67 to column 14, lines 1-13 and Fig. 10A).

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the method disclosed by Johnston to include saving the data history further comprises: saving the data history in an array, wherein each element of the array comprises a value associated with the history operand at a particular time using the teaching of Levine. The modification would be obvious because one of ordinary skill in the art would be motivated to store data efficiently.

Per Claim 16:

The rejection of claim 1 is incorporated, and further, Johnston does not explicitly teach that saving the data history further comprises: saving the data history in a file. Levine teaches saving the data history further comprises: saving the data history in a file (column 3, lines 16-18).

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the method disclosed by Johnston to include saving the data history further comprises: saving the data history in a file using the teaching of Levine. The

Art Unit: 2124

modification would be obvious because one of ordinary skill in the art would be motivated to store data for post processing.

Per Claim 24:

This is a computer-readable medium version of the claimed method discussed above, claim 8, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

Per Claims 42, 45, 51 & 53:

These are another versions of the claimed method discussed above (claims 5, 8, 14 & 16, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also obvious.

Response to Arguments

23. Applicant's arguments with respect to claims 1-58 have been considered but are moot in view of the new ground(s) of rejection.

In the remarks, the applicant argues that:

a) Claims 35-37 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Levine (USPN 6,349,406). Levine relates to "a method and system for compensating for instrumentation overhead in trace data by computing average minimum event times." (Abstract) More specifically, under Levine "in order to profile a program, the program is executed to generate trace records that are written to a trace file." (Col. 3, lines 16-18) The "trace data may be

Art Unit: 2124

generated via selected events and timers through the instrumented interpreter without modifying the source code." (Col. 8, lines 14-16) The interpreter executes a trace program "used to record data upon the execution of a hook, which is a specialized piece of code at a specific location in a routine or program in which other routines may be connected." (Col. 9, lines 43-46) However, Levine does not teach or suggest using a history operator and a history operand as described in the pending application.

Independent claim 35, upon which claims 36 and 37 depend, recites in part "a first data field containing data representing a value associated with an instance of a history operand; and a second data field containing data representing a location within a program where the value was assigned." Levine does not teach or suggest a first data field containing data representing a value associated with an instance of a history operand; and a second data field containing data representing a location within a program where the value was assigned. Rather, Levine teaches trace data generated by an interpreter upon execution of a hook code in the source program. For at least this reason, claims 35-37 are distinguishable from Levine and should be allowed.

Examiner's response:

a) Examiner strongly disagrees with applicant's assertion that Levine fails to disclose the claimed limitations recited in claims 35-37. Levine clearly shows each and every limitation in claims 35-37. Levine teaches a history operand (column 13, lines 66-67 to column 14, lines 1-13 and Fig. 10A; each function entry/exit point is interpreted as an instance of a history operand).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., history

operator) are not recited in the rejected claims 35-37. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In addition, see the rejection above in paragraph 20 for rejection to claims 35-37.

In the remarks, the applicant argues that:

b) Claims 5, 8, 14, 16, 24, 42, 45, 51 and 53 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Young, in view of Levine. For the reasons stated above, the combination of Young and Levine is no more relevant to the pending claims than either reference taken individually since neither reference teaches or suggests using a history operator and a history operand as described in the pending application.

Independent claim 1, upon which claims 5, 8, 14, and 16 depend, recites in part recognizing a history operator and a history operand in the source code; generating first object code that, when executed, saves a data history associated with all instance of the history operand; and generating second object code that, when executed, performs the history operator on the data history." Neither Young nor Levine teaches or suggests recognizing a history operator and a history operand in the source code, generating first object code that, when executed, saves a data history associated with all instance of the history operand, and generating second object code that, when executed, performs the history operator on the data history. For at least these reasons, independent claim 1 and its dependent claims 5, 8, 14, and 16 are distinguishable from the combination of Young and Levine and should be allowed.

Independent claim 19, upon which claim 24 depends, recites in part "a history operand to direct a translator to generate first object code that, when executed, saves a data history associated with an instance of the history operand; and a history operator to direct the translator to generate object second code that, when executed, performs the history operator on the data history." Neither Young nor Levine teaches or suggests a history operand to direct a translator to generate first object code that, when executed, saves a data history associated with an instance of the history operand, and a history operator to direct the translator to generate object second code that, when executed, performs the history operator on the data history. For at least these reasons, independent claim 19 and its dependent claim 24 are distinguishable from the combination of Young and Levine and should be allowed.

Independent claim 38, upon which claims 42, 45, 51, and 53 depend, recites in part "recognizing a history operator and a history operand in the source code; saving a data history associated with an instance of the history operand; and performing the history operator on the data history." Neither Young nor Levine teaches or suggests recognizing a history operator and a history operand in the source code, saving a data history associated with an instance of the history operand, and performing the history operator on the data history. For at least these reasons, independent claim 38 and its dependent claims 42, 45, 51, and 53 are distinguishable from the combination of Young and Levine and should be allowed.

Examiner's response:

b) Claims 5, 8, 14, 16, 24, 42, 45, 51 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston (U.S. 6,189,142) in view of Levine (U.S. 6,349,406). Independent

Art Unit: 2124

claims 1, 19 and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnston (U.S. 6,189,142). Johnston is relied upon for the limitations a history operand and a history operator. In addition, see the rejection above in paragraph 22 for rejection to claims 5, 8, 14, 16, 24, 42, 45, 51 and 53.

Conclusion

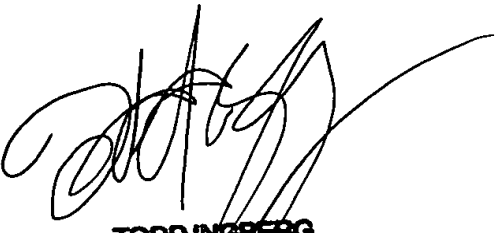
24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

25. Any inquiry concerning this communication from the examiner should be directed to Qamrun Nahar whose telephone number is (703) 305-7699. The examiner can normally be reached on Mondays through Thursdays from 9:00 AM to 6:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki, can be reached on (703) 305-9662. The fax phone number for the organization where this application or processing is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

QN
February 20, 2004



**TODD INBERG
PRIMARY EXAMINER**